

STATE OF MICHIGAN

IN THE SUPREME COURT

**ON APPEAL FROM THE COURT OF APPEALS
THE HONORABLE PATRICK M. METER, THE HONORABLE
KAREN M. FORT-HOOD, AND THE HONORABLE BILL SCHUETTE, PRESIDING**

The Greater Bible Way Temple of Jackson,
a Michigan Ecclesiastical Corporation

Plaintiff-Appellee

Supreme Court No. 130194,
130196

v

Court of Appeals No. 255966

City of Jackson, Jackson Planning
Commission, and Jackson City Council

Circuit Court No. 01-003614-AS

Defendants-Appellants

BRIEF OF AMICUS CURIAE

**MICHIGAN MUNICIPAL LEAGUE LEGAL DEFENSE FUND
IN SUPPORT OF DEFENDANTS-APPELLANTS, CITY OF JACKSON,
JACKSON PLANNING COMMISSION AND JACKSON CITY COUNCIL**

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I. STATEMENT OF BASIS OF JURISDICTION

Amicus Curiae Michigan Municipal League Legal Defense Fund accepts the Statement of Basis of Jurisdiction of Defendants-Appellants.

II. STATEMENT OF QUESTIONS PRESENTED

DID THE COURT OF APPEALS ERR IN HOLDING THAT THE CITY VIOLATED RLUIPA BY REFUSING TO AMEND ITS ZONING ORDINANCE TO ACCOMMODATE THE REQUEST FROM THE GREATER BIBLE WAY TEMPLE OF JACKSON?

The Circuit Court answers “No.”

The Court of Appeals answers “No.”

Defendants-Appellants answer “Yes.”

Plaintiff-Appellee answers “Yes.”

Amicus Curiae, the Michigan Municipal League Legal Defense Fund answers “Yes.”

III. STATEMENT OF FACTS

Amicus Curiae Michigan Municipal League Legal Defense Fund accepts the Statement of Facts of Defendants-Appellants.

IV. ARGUMENT

A. Introduction

Amicus Curiae, the Michigan Municipal League (the “Municipal League”), is a non-profit corporation created in 1899 to represent and advance the interests of cities and villages and to improve those municipal entities through educational programs and cooperative efforts. The Board of Directors of the Michigan Municipal League Legal Defense Fund authorized the Municipal League’s participation in this matter. The Legal Defense Fund represents the Municipal League’s interests in litigation holding statewide ramifications for its member municipalities. Petitioner-Appellant, the City of Jackson, (the “City”), is one such member.

In this case, the City was presented with a request to rezone several parcels of property acquired by the Greater Bible Way Temple. The City Council refused to enact an amendment to the zoning ordinance, which would have rezoned the land from single family residential to multiple family residential. Plaintiff-Appellee filed suit in Jackson Circuit Court claiming that the City violated RLUIPA in refusing to adopt the amendment to its zoning ordinance.¹

The trial court erroneously held that the City’s decision not to rezone the land violated RLUIPA. The trial court based its decision on its conclusions that Plaintiff-Appellee is a religious entity that was seeking an individualized decision on a proposed land use, that construction of an apartment complex is in furtherance of Plaintiff-

¹ The complaint was actually a two-count complaint that also alleged traditional zoning-type claims. The City’s motion for summary disposition on that claim was granted and that ruling was not appealed.

Appellee's religious mission, and that the City's refusal to rezone the land imposed a substantial burden on Plaintiff-Appellee's exercise of its religious mission. The trial court also held that the City's interest in maintaining the neighborhood as a single family residential housing was not a compelling government interest and that the refusal to rezone the property was not the least restrictive means of accomplishing that interest.

Just as the trial court did, the Court of Appeals skipped over the jurisprudential requirements of RLUIPA and went directly to the determination of whether Plaintiff-Appellee's construction and operation of an apartment complex is a religious exercise protected by RLUIPA. The failure of both lower courts to address the initial question of whether this case falls within the scope of RLUIPA must be corrected by this Court. While RLUIPA's general rule is broad, it is limited in its application by the terms of the statute and should only be construed to apply in those instances in which Congress meant for it to apply. The Court of Appeals ruling was not only defective in its application of RLUIPA to the facts at hand, it was even more defective in that it failed to recognize that the plain language of the statute limits its application to instances where there is a discrimination against religious exercise in the "implementation of" a land use regulation.

Amicus believes it is important for this Court to overturn the Court of Appeals decision not only because the Court of Appeals ignored the plain language of the statute, but also because the Court of Appeals ruling violates the policy behind the enactment of RLUIPA. RLUIPA was meant to protect religious organizations from discrimination in land use decisions, it was not meant to give religious organizations a sword with which to

destroy one of most essential functions of local government. *See Brae Burn, Inc v Bloomfield Hills*, 350 Mich 425; 86 NW2d 166 (1957).

B. Standard of Review – de novo

This Court reviews de novo a trial court's grant or denial of a motion for summary disposition. *Nastal v Henderson & Assocs. Investigations, Inc.*, 471 Mich 712, 720; 691 NW2d 1 (2005). Questions of statutory interpretation are also reviewed de novo. *Id.*, see also *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). The Court's primary goal when interpreting statutes is to discern the intent of the Legislature by focusing on the best indicator of that intent, the language the Legislature adopted in the statute. *People v. Anstey*, 476 Mich 436, 442-443; 719 NW2d 579 (Mich 2006), citing *People v Stewart*, 472 Mich 624, 631; 698 NW2d 340 (2002). The general rule is that statutes should be interpreted consistent with their plain and unambiguous meaning. *See Paige v City of Sterling Heights*, 476 Mich 495, 504; 720 NW2d 219 (Mich 2006); see also *Northern Concrete Pipe, Inc v Sinacola Cos-Midwest, Inc*, 461 Mich 316, 320-321; 603 NW2d 257 (1999).

C. Amendment of a Zoning Ordinance Is Not Within the Scope of RLUIPA

1. Plain Text Reading of RLUIPA

This case requires the Court to interpret the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 USC 2000cc *et seq.*, which was passed by Congress in 2000, after the United State Supreme Court invalidated the Religious Freedom Restoration Act in *City of Boerne v Flores*, 521 US 507; 138 LEd2d 624; 117 S Ct 2157 (1997).

The general rule of RLUIPA, as it relates to the regulation of land use, is:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest. 42 USC 2000cc(a)(1).

However, this general rule is only applicable in cases where (1) the substantial burden is imposed on a program or activity that receives Federal funding, (2) the substantial burden affects interstate commerce, or (3)

the substantial burden is imposed on the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved. 42 USC 2000cc(a)(2)(c).

The first question that must be answered in this case is whether an amendment to the City of Jackson zoning ordinance falls within one of these categories. Everyone agrees that the only category at issues is the third, implementation of a land use regulation under which the City makes individualized assessments of the proposed uses for the property involved.

“Land use regulation” is a defined term under RLUIPA, which means

a zoning or landmarking law, or the application of such law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest. 42 USC 2000cc-5(5).

While it is clear that the City's zoning ordinance fits within the definition of "land use regulation," to stop there ignores the words "implementation of," which precede "a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved" in 42 USC 2000cc(a)(2)(c).

In *Shinholster v Annalopolis Hospital*, 471 Mich 540, 549; 685 NW2d 275 (2004), this Court explained that when attempting to discern legislative intent in a statute, a court cannot ignore words used by the Legislature in the statute.

This Court's primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Murphy v Michigan Bell Tel Co*, 447 Mich. 93, 98; 523 NW2d 310 (1994). "The words of a statute provide 'the most reliable evidence of [the Legislature's] intent . . .'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999), quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). In discerning legislative intent, a court must "give effect to every word, phrase, and clause in a statute . . .'" *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). The Court must consider "both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley* at 237, quoting *Bailey v United States*, 516 US 137, 145; 116 S Ct 501; 133 L Ed 2d 472 (1995). "The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended." *Sun Valley* at 237. "If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Id.* at 236.

Thus, the Court must give meaning to the phrase "implementation of." Where a term is not defined by statute, courts may look to dictionary definitions. *See People v Perkins*, 473 Mich 626, 639; 703 NW2d 448 (2005), citing *Woodard v Custer*, 476 Mich

545; 719 NW2d 842 (Mich 2006). *Webster's II New College Dictionary* defines "implement" as "to put into effect: CARRY OUT <*implement* the combat plan>." *Webster's II New College Dictionary* (2001). Amending a zoning ordinance is not putting into effect the land use regulation, in fact, it is changing the land use regulation. Implementation of a land use regulation is putting into effect a city's zoning ordinance, in other words *implementation* of a land use regulation is the *application* of a city's zoning ordinance, rather than the *amendment* of the ordinance, thus, amendment of a city's zoning ordinance is not within the scope of RLUIPA.²

2. RLUIPA as a Codification of *Boerne v Flores*

Amicus accepts and adopts the arguments set forth by Defendant-Appellant with regard to the argument that RLUIPA was meant to be a codification of the United States Supreme Court ruling in *Boerne*, which found the Religious Freedom Restoration Act unconstitutional.

D. Practical Effect of Court of Appeals Decision

If the Court of Appeals decision in this case is upheld, it will have the effect of eviscerating zoning and other land use regulations in the State of Michigan. If communities must alter their master plans and zoning ordinances whenever any religious institution wants to construct something that does not conform to the current plan, there will be no point to zoning and master plans anymore. Land values will decrease if people

² The distinction between implementation of a zoning ordinance and application of a zoning ordinance is fully discussed in Defendants-Appellants Brief in the context of an "individualized assessment," amicus supports the argument in that context and adopts it for support of the argument that meaning must be given to the phrase "implementation of."

cannot purchase homes and businesses without knowing what may be built next to them if a religious organization purchases the property. People who purchase homes in what they thought were stable neighborhoods or quiet subdivisions may soon find high rise apartment complexes next door. For example, home owners with lake front property (on a lake surrounded entirely by single family homes on at least 2 acre lots) may be confronted with a religious organization that has as part of its mission providing recreational opportunities for underprivileged children. This organization purchases a lot on the lake and brings in a few hundred day campers every day. What was once a quiet lake enjoyed by the property owners and their guests becomes noisy and congested. Property owners who invested in property on what was a private lake become property owners on what is comparable to a public beach. It is not hard to imagine what happens to the property values of the lakefront lots.

E. Michigan Zoning Enabling Act

It should be noted that effective July 1, 2006, the Michigan Zoning Enabling Act repealed the prior zoning acts, including the City Village Zoning Act, which was the effective act at the time the City passed the zoning ordinance at issue in this case and at the time Plaintiff-Appellee asked the City to amend its zoning ordinance. However, under both the City Village Zoning Act and the new Michigan Zoning Enabling Act, a zoning board of appeals has the power to grant use variances in a city. The zoning board of appeals is not the legislative body charged with passing or amending the zoning ordinance, rather it is a body that implements the zoning ordinance enacted by the legislative body.

V. CONCLUSION

If allowed to stand, the Court of Appeals ruling will have an adverse effect on property values and stability of communities and neighborhoods. While municipalities certainly should not be allowed to discriminate against religious organizations, they should be able to adopt regulations that they apply equally to all citizens and organizations within their jurisdiction. While RLUIPA was meant to protect religious organizations from discrimination in land use regulation, it was not meant to be a sword with which they could destroy zoning, which has been recognized by this Court as well as other courts around the country as one of the most essential functions of local government.

The Court of Appeals opinion failed to recognize the plain and ordinary meaning of the terms used in RLUIPA and also failed to recognize all of the terms in the section of the statute defining its scope with regard to land use regulations.

VI. RELIEF

Wherefore, the Michigan Municipal League Legal Defense Fund respectfully requests that this Court reverse the Court of Appeals, hold that the City of Jackson did not violate RLUIPA in refusing to grant Plaintiff-Appellee's request for an amendment to the zoning ordinance, and grant such other relief as is warranted in law and equity.

Respectfully submitted,

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